Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term 1976.

No. 76-239.

JAMES B. BAMFORD, Chairman; DAVID SHIREY, STEWART DE TURK, BOARD OF ASSESSMENT APPEAL, COUNTY OF BERKS,

Petitioners,

v.

DONALD F. GARRETT, SHARON B. GARRETT, VERA A. TURPIN,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

REPLY BRIEF FOR PETITIONERS.

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REPLY BRIEF FOR PETITIONERS.

In the Petition, three reasons were advanced why this Court should grant the Writ: (1) the conflict with the decisions of other Courts of Appeal; (2) the conflict with controlling decisions of this Court; and (3) the exceptional importance of the question decided.

Respondents' assertion that the decision by the Court of Appeals in the instant case is in "harmony with the law of its sister courts" and therefore not in *conflict* with those decisions, evidences an unwillingness to accept the ob-

vious. Their attempt to distinguish the myriad of cases contrary to the instant decision necessitates a further brief examination of the *contrary* authority.

In *Miller v. Bauer*, 517 F. 2d 27 (7th Cir. 1975), the court, in holding § 1341 a bar to the cause of action, found that subsequent to a tax assessment an aggrieved taxpayer may appeal the assessment to the Accounting Board of Review, the State Board of Tax Commissioners, a county circuit court, the Indiana Supreme Court, and finally, to the United States Supreme Court.

In *Gray v. Morgan*, 371 F. 2d 172 (7th Cir. 1966), *cert. denied* 386 U. S. 1033, the court found that taxpayers aggrieved by a determination of the Board of Tax Appeals may appeal to the county circuit court, the Wisconsin Supreme Court, and ultimately to the United States Supreme Court.

The same judicial appellate review procedure was also found in *Aluminum Company of America v. Department of Treasury of Michigan*, 522 F. 2d 1120 (6th Cir. 1975); *United States v. State Tax Commission*, 481 F. 2d 963 (1st Cir. 1973); *Hickman v. Wujick*, 488 F. 2d 875 (2d Cir. 1973) and *Bland v. McHann*, 463 F. 2d 21 (5th Cir. 1972), *cert. denied* 410 U. S. 966 (1973). The Respondents in the case at bar have identical judicial review remedies under Pennsylvania law.

The absolute right to appellate *judicial* review of an adverse determination by the local taxing authority was the compelling reason why these and other courts have unequivocally determined that the remedy provided under state law was "plain, speedy and efficient." Procedural niceties may differ among states; however, the substantive remedies available to these Respondents under Pennsylvania law is unquestionably identical to those leading contrary decisions. The Fifth Circuit decision in *Bland v. McHann, supra,* is decisive. The Court unhesitatingly found the state remedies, which parallel those in the instant case, "plain, speedy and efficient."

Any reliance by the Respondents on *Hillsboro Township v. Cromwell*, 326 U. S. 620 (1946), is unjustified. An examination of *Hillsboro* again reveals that the taxpayers did *not* have a state judicial remedy of *right* which would allow them to challenge the constitutional infirmities of the New Jersey taxing scheme. *Cromwell* has been, and should continue to be, limited to those cases where entry to the state court system is not assured as a matter of right. Clearly, the Pennsylvania statutory scheme allows full and complete judicial appellate review as a matter of right in connection with any determination by the local taxing authorities.

Respondents rely heavily upon their claim that the sought-after *injunction could* increase the total revenues of Berks County. This is totally irrelevant, even if true. § 1341 prohibits the *interference* by federal courts in what is, in essence, a local taxing matter regardless of the economic effect. Respondents have simply failed to meet the issue or deal with this Court's most recent decisions wherein this issue is discussed. *Moe v. The Confederated Salish & Kootenai Tribes of the Flathead Reservation*, 44 U. S. L. W. 4535, 4537-38 (1976); *Steffel v. Thompson*, 415 U. S. 452 at 472 (1974); *Lynch v. Household Finance Corporation*, 405 U. S. 538, 542, N. 6 (1972); and *Perez v. Ledesma*, 401 U. S. 82, 126-28 (1971) (Brennan, J. concurring).

Notwithstanding their continued assertion that Pennsylvania remedies are inadequate, the Respondents' Brief in Opposition ignored the most recent decision by the Pennsylvania Supreme Court found in *Borough of Green Tree v. Board of Property Assessments*, 328 A. 2d 819

(1974), which leads Petitioners to conclude that Respondents are now persuaded that a court of equity in Pennsylvania would, in fact, take jurisdiction of a case such as the one at bar concerning the *constitutionality of the validity of the assessment scheme.*

Although not raised by the parties previously, and not discussed by either lower court, the Petitioners wish to point out that a Pennsylvania state court has concurrent jurisdiction with the federal courts regarding a § 1983 suit. The Respondents clearly have the ability to bring a § 1983 action in the courts of the Commonwealth of Pennsylvania. See generally, *Long v. District of Columbia,* 469 F. 2d 927 (D. C. Cir. 1972); *International Prisoners Union v. Rizzo,* 356 F. Supp. 806 (U. S. D. C. Pa. 1973); and *Ammlung v. City of Chester,* 355 F. Supp. 1300 (U. S. D. C. Pa. 1973) *aff'd.* 494 F. 2d 811 (3d Cir. 1974).

Not since *Hillsboro Township v. Cromwell, supra* (30 years ago), has this Court had an occasion to definitively study and rule upon the adequacy of state remedies in the context of § 1341. Conflicts among the Circuits exist and this Court ought to grant Petitioners' Writ so that this important aspect of federal-state relations may be definitively and dispositively decided.

CONCLUSION.

For the foregoing reasons, it is respectfully urged that the Petition for Writ of Certiorari be granted.

Respectfully submitted,

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